in the way of effective improvement through this method. It follows, therefore, that effective reform must come through legislation. This may take either of three forms: (1) A succession of brief practice acts dealing with portions of the subject or with special details, (2) a complete general practice act, after the general model of the codes of procedure, covering, or attempting to cover all details at one stroke, (3) a short, simple practice act laying out the broad lines only, and, so far as possible, dealing only with those matters that require legislative change or legislative authority for change, leaving the details to be settled, developed and improved by general rules to be devised or adopted by the judges. The first of these methods is open to serious objections. In the first place, it makes progress one-sided. Advance takes place here and there, as it were by jerks, but the general system is left as it was. And it happens not infrequently that defects are really in the system as a whole more than in the details. In that event, the detailed improvements have to take their place in the system and are molded thereto by construction until they fail of effect. A more serious objection is that such a succession of acts, when the work is complete, will give us a mass of enactment with all the characteristics of a code. In other words, it will give us a complete scheme in all its details, laid down in advance by legislation, and to be altered only by more legislation. The choice, therefore, must be between the second and third of the three methods mentioned."

The discussion of Prof. Pound's paper showed that the sentiment of the association was decidedly in favor of reform, though there were a few who did not hesitate to declare that existing methods were as nearly perfect as human wisdom could make them. One of these was Chief Justice Vickers of the Illinois Supreme Court, who asserted that he was not a reformer and that in his judgment the "hue and cry in the law journals and among the members of the bar was a myth." It is refreshing to note, however, that this view was concurred in by only a very small portion of those present. One incident which indicated the sentiment of the association as a whole was the sending of a telegram to President Taft assuring him that the bar of Illinois was in sympathy with his efforts in behalf of legal reform. J. W. G.

Edgar A. Bancroft on the Need of Reform in Court Procedure.—At the recent meeting of the Illinois State Bar Association Mr. Edgar A. Bancroft, the president of the Association, made the following remarks on the need of procedural reform:

"When lawyers meet for public discussion it is quite usual for them to consider matters outside their professional work. Very many of the organizations for civic betterment, nearly all philanthropic work which seeks improved legislation, are guided and supported by lawyers and judges. We are wont to claim, and I think rightly, that we are public-spirited, and that our associated efforts are usually directed toward ends beneficial to others, and which increase neither the number of our clients nor the fees they pay. It is well that this is so. Society values every profession and occupation, very much as it does the individual, by its contribution to the general welfare.

"At the present time there is a duty we owe the public, which runs with our own professional interests. It is resolutely and thoroughly to take up the present methods and machinery of the administration of justice for the purpose of radically simplifying that procedure and adapting it to the spirit and the needs of to-day.

"The officers of the court are the mere agencies—the methods and rules of procedure are the mere tools and appliances—for accomplishing justice, for ending strife fairly, promptly and completely. Neither agent nor implement has a reason or excuse for being, except as they together directly aid the work of the courts. They ought not to continue when they cease to aid, or when better methods and tools are needed.

"In all the activities of to-day we find marvelous improvements in methods. Modern machines and devices contain, and express in their actions, keen brain work as well as deft manual skill. They have revolutionized the industries of the world. The marvelous systematizing of co-operative work has likewise increased many-fold the efficiency of the forces in trade and commerce. The massing of resources, the joining of gigantic enterprises under one management, would be utterly bewildering, wasteful and self-destructive but for the intelligence which precedes and animates it and guides it by methods which prevent confusion and transform a vast complexity into a clear and orderly simplicity.

"In the medical profession the advance of the last generation has surpassed all that was done in the centuries before. It is due, as all progress is due, to the intellectualizing of a vocation, to harnessing the imagination to the plow; it is due to the application of the inventive method to medical problems. Empirical as it must be, its discoveries have evolved, as Darwin's theory evolved, from a closer ascertainment of facts and a more intellectual and imaginative study of their relations. They have come, as all the marvelous discoveries of our epoch have, by centering the whole thought and purpose of the investigator steadily upon the selected field, to seek out further facts and their hidden causes; as the moving telescope with its sensitive photographic plate gazes steadfastly upon one point in the dark vault of night until there finally comes out on the retina of its unclosing eye a clear image of the imperceptible star.

"The lawyer, in theory, is a part of the public institution for the cure of strifes between citizens. The courts are not a sort of amphitheater in which all contests shall be waged so as to preserve order elsewhere in the community. Their function is to put an end to strife that will not otherwise adjust itself.

"It would be criminal malpractice to apply to a serious illness to-day the treatment of fifty years ago, or to operate with the surgical instruments and appliances of that time. The methods, philosophy, *esprit de corps* of the medical profession have all been revolutionized, with incalculable benefit to its members—in prestige, rewards and influence—and still more, to society, as well as to the injured, the suffering and the mentally disordered.

"In the profession of the law, in the strife-hospitals of the courts alone, are the antiquated methods, appliances and standards still prevailing—substantially untouched by the spirit of modern life. We still have two trials in ejectment cases; we still maintain the distinction between law and chancery, with the judge exercising the powers of the court in chancery, and the jury exercising the main powers of the court at law; terms of court, closing its doors for parts of the year when they should be at all times open; the various pleas of general denial, which are inconsistent with the very idea of pleading, and which effectively *bar,* instead of *lead to,* definite issues; the rule that presumes all technical errors to be prejudicial and reverses the whole case instead of correcting the error; and many other inherited rules and practices which may have been appropriate to the conditions out of which they grew, but which now are useless survivals; like

the dew-claws on the deer, the bony growth on the horse's fetlock, or the habit of the domestic dog to turn around several times before lying down—inherited from his wild ancestor who had thus to make his bed in the jungle.

"We know that expert attention to the injured or sick may be rendered useless by delay. We would think it barbarous if the ambulance driver stopped to dispute with the policeman, or called on a friend, while taking the injured man to the hospital. Yet early attention to a legal dispute is sometimes as important as in a medical case; and attention solely with a view to cure the condition is similarly appropriate.

"The sooner a contest is disposed of, the smaller the scars. Delays exasperate, and growing expenses create new points of disagreement, new claims and a greater obstinacy in the fight. It soon becomes a question of endurance, each side doggedly fighting, with eyes closed to everything but the hope of victory and the punishment of the opponent. The mere delay is often a denial of the remedy; and in every case it affects the parties unequally, and makes it more difficult for the court by its final order to put the parties at peace.

"We ought to remember that it is beyond the power of the courts accurately and certainly to vindicate the law and administer justice in every case. There can be only substantial accuracy in deciding any controversy. The chances of error are always present. The more complicated the system of judicial procedure, the greater the number of opportunities for error. The present system makes litigation not only very intricate, but also largely a game of chance or of chances. Every lawyer knows that there are many cases that could be decided either way without clearly outraging any rule of law, or violating any clear weight of the evidence. In a so-called close case this is always so—unless it is our 'close case!' In the actual result—absurd and impractical as is the suggestion—if all such cases were determined by lot honestly cast the decision would not be widely different, and the means by which it was arrived at would have many advantages; it would be speedy, final, fair and inexpensive, and, above all, it would leave no room for litigants to cherish ill will toward the arbiter, or resentment against their opponents.

"The immediate duty of finding the new and more efficient methods of procedure is upon the lawyers and the judges. The public could revolt from the clumsy and dangerous drugging and blood-letting of the old physicians and surgeons, but it could not suggest better remedies, better tools or better treatment. That had to come from an awakened, ambitious and scientific medical profession. It is so with the reform of procedure and of judicial administration. The public may condemn, as it is condemning and has condemned for a number of years; but the relief can be devised and brought to pass only by a public-spirited and expert legal profession. A change, and an early change, is demanded will certainly come. If the bar does not meet the demand with skill and thoroughness, in the spirit of simplicity and directness, the change will come in another form, with the probability of creating as many evils as its cures.

"If this sounds radical and iconoclastic, it is not so. It implies no lack of respect for the law or the courts, or any desire to revolutionize them. There must be an orderly way provided in which to administer the law; and the *abstract justice,* for which we so often hear the appeal made, is quite certain to be *concrete injustice* in very many cases. The vigilance committee is not the permanent agent of justice.

"What is needed is not a new philosophy of court procedure, not a new writing of the laws of the land, not the creation of a new jurisprudence in pursuance of a new theory of justice—not supplanting an obsolete procedure of too much detail, with a code of new and still more complexity—not to suppiant 300 sections with the 3,300 sectons of the New York Code. What is needed is a cutting out of all dead branches, a removal from the mechanism of all useless parts, a substitution of the simple for the complex mechanical equivalent, a rebuilding to meet modern needs. Not to tear down Westminster hall or the Inns of Court, but to give them more light and air and a modern equipment, and adapt them to modern needs. We should preserve all that centuries of experience have proved, but relieve them from all that has only historical interest, that merely tells of past conditions, like the brasiers and candlesticks and goose quills and sandboxes of the ancient time.

"It is essential to the success of any plan of procedural reform that it should contain at least the main features, and should be framed along the general lines, of the recommendations of the American Bar Association. I particularly call your attention to these general principles; in order to think upon the subject with any value to one's self or to the cause, it is necessary to keep in mind these fundamental propositions:

"1. A practice act should deal only with the general features of procedure and prescribe only the general lines to be followed, leaving details to be fixed by rules of court, which the courts may change from time to time as actual experience of their application and operation dictates.

"2. The sole office of pleadings should be to give notice to the respective parties of the claims, defenses and cross-demands asserted by their adversaries.

"3. The equitable principle of complete disposition of the entire controversy between the parties should be extended to its full extent and applied to every type of proceedings.

"4. No cause, proceeding or appeal should fail solely because brought in or taken to the wrong court or wrong venue; but if there is one where it may be brought or prosecuted it should be transferred thereto and go on there, all prior proceedings being saved.

"5. So far as possible, all questions of fact should be disposed of finally upon one trial.

"6. An appeal should be treated as a motion for a rehearing or new trial, or for vacation or modification of the order complained of, as the case may require, before another tribunal.

"7. It is essential to eliminate completely all substantive law.

"It should be excluded because it is another subject and should be treated by itself on its own merits. It relates to law-making and not to law-administering, and confusing the two does the greatest injury to each. Procedure is method—pure method; is system—pure system. To be effective it should, like a surgical instrument, a utensil, or weights and measures, be clean and finely adjusted; it should not be 'subdued to that it works in.'

"There are two other rules which seem to me fundamental:

"(a) The first and last word in all procedural improvement should be *simplicity*. Adopt nothing new that is less simple than the present; make the steps between beginning an action and the final judgment, which is finally final, as few as possible—so that they embrace a certain notice of the beginning of

the action and of its nature, a reasonable time to answer, one clear opportunity on each side to object to the insufficiency of the pleading of the other side, and of each side to correct its pleading, a reasonable time in court for trial, and one opportunity for review upon essential points; with the power in the trial court and in the reviewing court to enter judgment in accordance with its decision wherever its decision upon a question of law, as applied to the facts found or undisputed, determines the controversy.

"(b) That no present method should be discarded because it is old, or supplanted with a different method merely because it is new. The old should remain, unless it is unnecessary or ineffective or is supplanted with a better.

"If we are entirely frank, I think we must admit that we have become so accustomed to all the devious ways in pleading, all the preliminary motions which we are wont to interpose as hurdles to the opposite party to be taken before the real trial is reached; to the use of a jury in all cases at law, no matter how ill-suited the questions are for an ordinary jury's consideration; to the rule of a unanimous verdict, which leads us to examine the jury presented with a minuteness and at a length that would never be thought of but for the fear or in the hope of a hung jury—that we instinctively defend them.

"The trial itself, in the preparation of the evidence to be presented, in the manner of presentation, in the objections that are urged, in the arguments upon the admissibility of evidence—all are affected by the presence of a jury in the box. That jury is always human—subject to human sympathies, prejudices and suspicions—and is very often ignorant. We are accustomed to these methods, and we have, somehow, come unconsciously to believe that in them are the real elements of a fair trial, and only through them can legal justice be obtained. We confuse the means and preliminaries with the administration of justice itself. The shorter and simpler the path to the judgment seat, the sooner will justice be done.

"Yet we must also place a share of the responsibility for present conditions upon the trial courts. It is true they should have larger powers, such as they had at common law and as the federal judges possess. But they do not exercise courageously and fully the powers which they now have. They should participate more directly in the conduct of the trial in order to facilitate its orderly progress and clear the path of petty obstructions. The unimportant preliminaries of the trial could be very much shortened, and the dilatory tactics of counsel could be more effectively discouraged. The trial courts to-day are *lawyerized*. We have so strongly contended at all times for our rights in all these matters of preliminary motions and court procedure, have so strenuously protested whenever the court has been a real factor in the conduct of the trial and it has resulted against us, that the judges are generally little more than mere moderators between the contesting lawyers. They should be lawyers of the first rank, and seats upon the bench should be the reward for leadership at the bar. Then the judges could be an important factor in the trial and yet keep clear of improper interference. Then they would not be afraid of committing technical errors in promoting the cause of justice against the wiles of counsel or the prejudice of jurors.

"Our trials of law cases as now conducted tend to develop in the bar two kinds of ability, to set up for them two standards of excellence: the ability and the excellence of swaying a jury by appeals to sentiment, sympathy or prejudice,

as against the ability and excellence of clearly, fully, frankly, accurately discovering and stating the controlling points in the evidence and applying the appropriate rules of law. There is, of course, something to be said upon the other side; but there can be nothing said in favor of the present methods as against changes that would emphasize the essentials and bring the parties to the open battle more promptly, and have the arbiters in the contest more intelligent and more competent. J. W. G.

Reform of Criminal Procedure.—In an address before the State Bar Association of Georgia on June 9 of this year Judge George Hillyer of Athens, Ga., dwelt upon the great increase of crime in the United States and the inadequacy of our existing methods of dealing with it. The address is one of the best that it has been our pleasure to read, and it deserves to be studied by every person interested in the administration of punitive justice.

"As our remedial procedure in criminal cases now stands," he declared, "it is easy to convict a friendless negro or any poor and friendless person who has neither money nor influence to employ counsel or canvass the jury lists.

"Is anybody ever hung who has money—plenty of it—with which to employ counsel, canvass jury lists and circulate petitions? The poor and friendless are sometimes executed, but the rich and powerful never, or almost never? Can such be? Well, yes, and they are; but they are not right. How long will they continue? The answer is plain. Just so long as the pulpit and religious press, the legal profession and good men everywhere fail to do their duty by demanding and obtaining from the legislature the needed reforms in the law of criminal trials.

"Recur again to the figures above given and the armies of officials and police—two hundred million dollars expended by the South every year on her criminals. What a pity that such expensive machinery should have been allowed to get rusty and run down—inefficient and nearly useless. It needs repairs. Take out the bad parts; put in new and better parts. Look where you will in our civilization and you find improvement, progress, with better results everywhere but here; here more necessary and essential than in all else. It is declared in the constitution, the very fundamental law both state and national, that the primary duty of government is protection to life and property. In our boasted civilization I think we are warranted in saying that at this day and hour such protection is far less adequate and complete than it was a hundred years ago.

"Let us hear more about trying to stop the inhuman crimes, crimes enough to make good men and angels weep, even though such a thing as lynching had never been thought of.

"The existing state of things is a disgrace to our civilization. We ought to deal with it like men; find the remedy and then adopt that remedy."

"Now, I put it to you; a few months ago a little eight-year-old girl was assaulted while kneeling at the altar or sacristy of a church, dragged away and brutally murdered. When that case comes on to be tried the law of criminal procedure vests in the judge absolute power by which, even though wrongfully done or through error, he may rule out any item of evidence offered against the prisoner, or decide any point that may be raised by the lawyers in favor of the prisoner, or even quash the proceedings or direct an acquittal and turn the guilty perpetrator loose. True, if wrongfully done it would be error in the judge.